IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.11.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.2257 of 2006

Commissioner of Income Tax
Chennai. .. Appellant/ Respondent

Vs.

Adyar Gate Hotel Ltd.,
132, TTK Road, Chennai-18
.. Respondent/ Appellant

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 13.1.2006 in ITA Nos.1519/Mds/2002, for the assessment year 1993-1994 aganist the order of the Commissioner of Income Tax (Appells -III) Chennai 600 034, dated 10/062002 in ITA No Tr.520/2001-02 A-III and ;aganist the order of the Deputy Commissioner of Income Tax Special Range III Chennai 600 034 dated 126/02/1998 in PAn/GIR, 20-A, 1993-94.

For Appellant :Mr.J.Narayanasamy, Jr. SC. For IT
For respondent :Mr.Habibullah Basha, SC for
Mr.C.Manishankar

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 13.1.2006 made in ITA Nos.1519/Mds/2002 for the assessment year 1993-94 and the following substantial question of law has been raised for consideration:

> Whether in the facts and circumstances of the case, the Tribunal was right in holding that expenditure tax, luxury tax and sales tax should not be included in the total business receipts of the assessee for the purpose of computation of deduction under section 80HHD?

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2. The assessing officer, for the assessment year 1993-94, included expenditure tax, luxury tax and sales tax in the business receipts for the purpose of computation of deduction under section 80HHD of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), on the ground that since the liability to pay these taxes arose on account of the assessee carrying on the business, the receipts would form part of the total turnover. On appeal by the assessee, the Commissioner of Income-tax (Appeals) confirmed the order of assessing officer. On further appeal by the assessee, the Appellate Tribunal, held that expenditure tax, luxury tax and sales tax should not be included in the total business receipts of the assessee. Hence, the present appeal by the Revenue raising the question of law referred to above.

3. It is brought to our notice by the learned senior counsel appearing for the assessee, which is not disputed by the counsel appearing for the Revenue, that the issue raised in the question is covered against the Revenue in the unreported decision of this Court in the assessee's own case in T.C.No.233 of 2006 dated 23.2.2006, wherein this Court, after considering the decision of this Court in C.I.T. v. Wheels India Ltd. (275 ITR 319) and the decision of Bombay High Court in C.I.T. v. Sudarshan Chemicals Industries Ltd. (245 ITR 769), held the issue in favour of the assessee.

4. It is seen that in the above two cases, viz., C.I.T. v. Wheels India Ltd. (275 ITR 319) and C.I.T. v. Sudarshan Chemicals Industries Ltd. (245 ITR 769), the Courts considered section 80 HHC of the Act relating to deduction in respect of profits retained for export business and held that sales tax and excise duty are not to be included in the total turnover while computing deduction under section 80HHC of the Act.

5. This Court in the assessee's own case in T.C.No.233 of 2006 dated 23.2.2006, while considering section 80 HHD of the Act relating to deduction in respect of earnings in convertible foreign exchange, applied the above ratio and held that expenditure tax, luxury tax and sales tax should not be included in the total business receipts for the purpose of computation of deduction under section 80 HHD of the Act.

6. Following the ratio laid down by this Court in the assessee's own case in T.C.No.233 of 2006 dated 23.2.2006, we hold that the Appellate Tribunal was right in holding that expenditure tax, luxury tax and sales tax should not be included in the total business receipts of the assessee for the purpose of computation of deduction under section 80HHD of the Act.

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7. Accordingly, we do not find any question of law, much less a substantial question of law that arises out of the order of the Appellate Tribunal and the tax case appeal stands dismissed. No costs.

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Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
'A' Bench Besant Nagar, Chennai -90.

2.The Commissioner of Income-
Tax (Appeals-III), Chennai.34

3.The Deputy Commissioner
of Income-tax, Spl. Range III,
Chennai. 34.
4. The Commissioner fo Income Tax, Chennai.34

+ One cc to Mr. Pusya Sitaraman Advocate SR 52107

+ One CC to Mr. C. Manishankar Advocate SR 51703

TEJ (co)
sg 05/12/06

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